

Decision 01-12-027

December 11, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Resolution W-4287
Authorizing a Service Area Extension
for Great Oaks Water Company

Application 01-10-021
(Filed October 19, 2001)

ORDER DENYING THE REHEARING OF RESOLUTION W-4287**I. SUMMARY**

In this Order, the Commission denies the rehearing of Resolution W-4287 (“Resolution”), which authorized the Great Oaks Water Company (“GOWC”) to revise its service area map to include the Metcalf Energy Center project and those areas where there exists a right to serve, but which are not yet reflected in GOWC’s service area map. The City of San Jose (“City” or “San Jose”) applied for rehearing on the grounds that the Resolution violates General Orders (G.O.) 96-A and 103. We have considered all of the arguments set forth in City’s rehearing application and have determined that there is no legal error. We therefore deny rehearing.

II. FACTS/PROCEDURAL BACKGROUND

By Advice Letter (AL) No. 151, filed on May 23, 2001, the Great Oaks Water Company (GOWC) requested revision of its service area map to include the planned plant site for the Metcalf Energy Center (MEC) project. The site is situated between two areas already being served and certificated by GOWC in the Coyote Valley. The filing includes AL No. 151, along with a Water Supply Questionnaire (WSQ), indicating that GOWC can meet the supply requirements of its current customers, the supply requirements of the MEC project, and the fire flow requirements during maximum demand.

On June 6, 2001, the Commission received an objection letter from the City, to which GOWC responded on June 9, 2001. San Jose claimed that GOWC does not

have sufficient existing capacity to serve both the MEC project and GOWC's existing customers, and that the WSQ was submitted with faulty assumptions.¹ City also asserted that GOWC should not be permitted to revise its service area map to include all the areas GOWC is presently serving. Included in those areas are the Piercy Road properties and Hellyer Park. To allay City's concerns, GOWC revised the original WSQ twice, satisfying Staff that GOWC has met the requirements for its filing.

A Water Division Staff investigation determined that there was no basis for the Commission to deny GOWC's request. Thereafter, the Commission adopted Resolution W-4287, granting GOWC the authority to extend its service area to include the MEC project, and also ordered GOWC to file service area maps to reflect the additional areas already being served by GOWC.

City timely filed an application for rehearing of Resolution W-4287 on October 19, 2001 on the grounds that the decision violates G.O. 96-A and 103. City also requests oral argument.

III. DISCUSSION

A. San Jose Has Failed to Prove Violations of General Order 96-A or 103.

City is requesting rehearing of that portion of the Resolution that authorizes GOWC to revise its service area map to include several properties along Piercy Road and Hellyer Park on the grounds that it violates G.O. 96-A and 103. San Jose asserts that GOWC is not in compliance with G.O. 96-A, which requires that a map or maps be filed indicating the boundaries of the service areas. City further asserts that GOWC does not comply with G.O. 103 in failing to submit a water supply questionnaire regarding its service to the contested areas.

San Jose is concerned that Piercy Road and Hellyer Park are within the City's municipal water system. This raises issues of territory and jurisdiction because the

¹ The WSQ is a document that Staff uses to determine whether water supplies are available to meet: 1) existing customer demand, 2) the proposed customer(s)/subdivision(s), and 3) fire flow requirements for all customers (existing and proposed). The water utility certifies and verifies the information in the WSQ under penalty of perjury.

Commission has no jurisdiction to regulate municipal utilities.² However, these facts do not support valid claims of jurisdiction. As we explain below, the Commission has already authorized GOWC to serve the Piercy Road properties in an earlier proceeding. Regarding the Hellyer Park property, GOWC has been openly serving this property for more than 35 years.

We note also that a municipal agency may invoke the Commission's jurisdiction in a proceeding where the Commission is called upon by that agency to evaluate the quality of service rendered by the agency upon the agency's protest that it can provide better service than the public utility, which proposes to serve the area.³ In so doing, the municipal agency has voluntarily submitted itself, to a limited extent, to Commission jurisdiction. Once having submitted to a comparison of its service with the public utility's, the City would be bound by the Commission's findings on the comparison and on public convenience and necessity.⁴

This is not the first time that the Commission has been faced with territorial issues involving GOWC and San Jose. Great Oaks Water Company (1985) 18 CPUC 2d 22 (D.85-06-022) also involved boundary disputes between GOWC and San Jose. In that case, the City had originally refused to allow the development of a disputed area under the theory that the area would not be ready for development for several years. Ultimately, the decision found in GOWC's favor.

In a 1991 decision directly on point involving the Piercy Road properties, the Commission granted GOWC a service area extension that includes those properties.⁵ On June 9, 1989, GOWC filed AL 123 seeking a service area extension that includes the Piercy Road properties. The decision authorized GOWC to revise its service area map and amend its tariff. (See Appendix A, 39 CPUC 2d at 359, showing the inclusion of

² *County of Inyo v. Los Angeles* (1980) 26 C.3d 154.

³ *Ventura etc. District No. 5 v. CPUC* (1964) 61 C.2d 462.

⁴ Public Utilities Code §1709 provides that the orders and decisions of the Commission which have become final shall be conclusive in all collateral actions or proceedings. Therefore, the City cannot seek to retry the issue of public convenience and necessity in another forum.

⁵ *Re Great Oaks Water Company* (1991) 39 CPUC 2d 339 (D.91-02-039).

Piercy Road in GOWC's revised service area.) GOWC has been serving that area ever since, and it is unclear why the City steps forward now to challenge GOWC's authorization to serve the area.

As for Hellyer Park, GOWC has provided service there for more than 35 years. The City now challenges GOWC's service to the area, but it does not have the power to prevent a state-regulated utility from extending its plant to serve additional residents.⁶ The City had an opportunity, under the rule of the Ventura case, to claim the service territory by asking the Commission to decide whether the public utility or the municipal utility would render better service to potential customers. While the Commission does not have the general jurisdiction to restrain the City from extending its service in the contested areas, the Commission's findings are final and binding on all parties, including governmental agencies.

During Staff's investigation, it became aware that GOWC's service area map did not accurately reflect all of the areas it serves, including Hellyer Park. Therefore, the Resolution requires GOWC to file a revised system area map: "The Commission cannot condone the lack of action by GOWC and must now require that GOWC update its system area map to reflect the addition of these areas already being served." (Resolution, p. 6.) This principle is replicated in Ordering Paragraph 2, which provides as follows:

2. Great Oaks Water Company is authorized to revise its service area map to include the areas where there exists a right to serve, but are not yet reflected in GOWC's service area map. These areas include the properties in the Calero Lake Estates area, individual properties around the Calero Lake Estates area, the Santa Teresa County Park and Golf Club, several properties along Piercy Road, Hellyer Park, and an area currently reflected as an excluded island on its service area map.

Pursuant to the Resolution, GOWC has agreed to do a compliance filing of its revised service area maps on or about December 3, 2001.

⁶ *Bakman* (1981) 5 CPUC 2d 359 (D.92606).

San Jose further contends that GOWC failed to file any water supply information as evidence that it can meet the design and construction standards of G.O. 103 for the contested areas. G. O. 103 requires that the utility submit a completed WSQ to the Water Division, which reviews it for compliance with the standards of G.O. 103. City contends that GOWC did not file any water supply information regarding its service to the disputed areas in this rehearing application. City is mistaken. During the course of the Water Division's investigation of City's concerns regarding GOWC's filing, Staff met with GOWC. Thereafter, GOWC revised the WSQ several times to address those concerns and, in the process, GOWC's responses incorporated all areas already being served by GOWC, including the Piercy Road and Hellyer Park property. We are satisfied that GOWC has carried its burden of proving the company has sufficient water available to meet demand and fire flow for all the areas it serves.

B. Oral Argument

City requests oral argument on the grounds that the Resolution "adopts new Commission precedent or departs from existing Commission precedent without adequate explanation (Rule 86.3(a)(i)); and/or changes or refines existing Commission precedent (Rule 86.3(a)(ii), by waving [sic] the requirement for a map of the boundaries of the new service areas, exempting Great Oaks from the requirement to provide a water supply questionnaire and changing the burden of proof with respect to establishing that minimum standards for design and construction will be met in the new service areas." (City Rhg. App. at 2-3.) This statement constitutes the sum total of City's argument. No further proof or explanation was provided in the rehearing application.

City's request fails to meet the criteria for oral arguments, as set forth in the Commission's Rules of Practice and Procedure (Rules) 86.3 (Cal.Code Regs., tit.20). The rule provides in pertinent part that an application for rehearing will be considered for oral argument if the application demonstrates that oral argument will materially assist the Commission in resolving the application, and the application raises issues of major

significance for the Commission.⁷ City made no attempt to develop an argument that could have persuaded the Commission to grant its request. The Commission has complete discretion to determine whether oral argument is appropriate in any particular matter. In its discretion, the Commission denies oral argument because City failed to comply with Rule 86.3, or to carry its burden of persuasion.

IV. CONCLUSION

The Commission has reviewed all of the reasons set forth by the applicant and finds that good cause does not exist to grant rehearing, as legal error has not been demonstrated. Therefore,

IT IS ORDERED that:

1. The rehearing of Resolution W-4287 is denied.
2. This proceeding is closed.

This order is effective today.

Dated December 11, 2001 at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

⁷ Rule 86.3 lists certain criteria which are not exclusive, but are intended to assist the Commission in choosing which applications for rehearing are suitable for oral argument.